

REPRESENTATIVE FOR PETITIONER:

Jack C. Birch, Attorney

REPRESENTATIVE FOR RESPONDENT:

Dennis D. Graft, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Burt Green, Life Estate/Joel)	Petition No.: 57-014-17-3-5-00338-18
Green-Remainder ¹ ,)	
)	Parcel No.: 57-01-22-300-046.000-014
Petitioner,)	
)	County: Noble
v.)	
)	Assessment Years: 2013-2017
Noble County Assessor,)	
)	
Respondent.)	

Appeal from the Final Determination of the
Noble County Property Tax Assessment Board of Appeals

October 30, 2018

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

¹ Although both Burt Green and Joel Green appear in the caption, Burt Green initiated the appeal and was the only one who attended or testified at the hearing. For simplicity, we will refer to the appeal as Burt Green's.

PROCEDURAL HISTORY

1. Burt Green initiated an appeal by filing a Form 133 Petition for Correction of an Error with the Noble County Auditor on or after September 28, 2017.² The Form 133 petition lacks any indication of what tax year(s) Green was appealing, but it specifies that he was challenging the improper removal of his homestead deduction.³
2. On January 18, 2018, the Noble County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 determination denying Green relief for the January 1, 2017 assessment date. However, notes from the PTABOA hearing attached to the Form 115 indicate that the PTABOA decided to deny Green’s request for a homestead deduction for “the previous years” as well. Green then filed a Form 131 petition with the Board claiming that the Noble County Auditor had improperly removed his homestead deduction for the 2013-2017 assessment years.⁴
3. On May 31, 2018, the Board’s designated administrative law judge (ALJ), Joseph Stanford, held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Green and County Coordinator/former-County Auditor Jacqueline L. Knafel were sworn and testified.⁵
5. Green offered the following exhibits:

² Green’s counsel signed the Form 133 petition on September 28, 2017. The copy submitted to the Board does not bear a filing date from the Auditor’s office, but the Assessor asserted the actual filing date was October 17, 2017. *Resp’t Brief at 2.*

³ Both the parties and their witnesses used the terms “homestead deduction” and “homestead exemption” interchangeably throughout their respective presentations, testimony, and post-hearing briefs. There is no statute that exempts homesteads from taxation. The Board infers that the parties are referring to the standard deduction for homesteads provided for under Indiana Code § 6-1.1-12-37, and we will use the term “homestead deduction.”

⁴ Because both parties presented evidence and arguments addressing the 2013-2017 assessment years, we consider Green’s claims for all five years.

⁵ County Assessor Kim Carson was sworn, but she did not testify. County Auditor Tonya Jones and Deputy Auditor Nicole Noe appeared at the hearing, but they were not sworn and did not testify.

Petitioner Exhibit 1:	Affidavit of David Magnus
Petitioner Exhibit 2:	Affidavit of Russell Becker
Petitioner Exhibit 3:	Affidavit of Gary Anderson
Petitioner Exhibit 4:	Copy of <i>Kellam v. Fountain Co. Ass'r</i>
Petitioner Exhibit 5:	Green's American Legion membership card
Petitioner Exhibit 6:	Green's Veteran of Foreign Wars membership card
Petitioner Exhibit 7:	Green's Fraternal Order of Eagles membership card
Petitioner Exhibit 8:	Receipt from Moving On Up, Inc., dated April 6, 2012
Petitioner Exhibit 9:	Application for Senior Citizen Property Tax Benefits

6. The Assessor offered the following exhibits:⁶

Respondent Exhibit 1:	Copy of 50 IAC 24-2-5
Respondent Exhibit 2:	Copy of 50 IAC 24-3-1
Respondent Exhibit 3:	"Frequently Asked Questions," published by the Department of Local Government Finance (DLFG)
Respondent Exhibit 4:	Homestead Verification Fact Sheet, published by the DLGF; DLGF memorandum entitled "2016 Legislative Changes Affecting Property Tax Deduction," dated March 30, 2016
Respondent Exhibit 5:	Green's 2009 Claim for Homestead Deduction
Respondent Exhibit 6:	"Important Notice to Homestead Property Owners," and an accompanying letter from Jacqueline F. Knafel
Respondent Exhibit 8:	Email from Michael Alexander to Sheri Auld, dated May 9, 2013
Respondent Exhibit 9:	Various notes made by the Assessor
Respondent Exhibit 10:	Various email correspondence and code cites
Respondent Exhibit 11:	Copy of <i>Kellam v. Fountain Co. Ass'r</i>
Respondent Exhibit 12:	<i>Kellam v. Fountain Co. Ass'r</i> conclusion
Respondent Exhibit 13:	Records of Green's tax payments
Respondent Exhibit 14:	Notes made by the Assessor
Respondent Exhibit 15:	Copy of Indiana Administrative Code referring to homestead deductions and small claims procedures
Respondent Exhibit 16:	"BMV: Proving Indiana Residency"
Respondent Exhibit 17:	Affidavit of Mary E. Applegate, Water Department for City of Ligonier
Respondent Exhibit 18:	Indiana driver's license for Green and a statement from Mark E. Dehn, Director of Driver Records
Respondent Exhibit 19:	Green's Indiana voter registration

⁶ The Assessor listed an Exhibit 7 on her exhibit coversheet (described as "Proof Residency Ohio Driver's License"), but she did not offer an exhibit matching that description.

- Respondent Exhibit 20: Affidavit of Christina K. Tevis, United States Postal Service
- Respondent Exhibit 21: Digital recording of the PTABOA hearing

7. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in these appeals, including the parties' post-hearing briefs; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

SUMMARY OF PETITIONER'S CASE

8. Green lived with his girlfriend in her home in Ligonier since moving to Indiana from Ohio in approximately 2000. In 2009, he purchased a residential property located at 400 Water Street in Ligonier at a sheriff's sale. Green was told "by someone in the courthouse" that even if he wasn't living in the property, he would be entitled to a homestead deduction so long as he did not rent the property, and that he could "fix it up" at his "leisure" before moving in. Green then filed for a homestead deduction and the Auditor granted it for 2009. *Green testimony.*
9. The house was in poor condition when he bought it, so Green continued living with his girlfriend while slowly renovating the property as his finances allowed. The Noble County Auditor removed Green's homestead deduction in 2013. Green contends that action was erroneous. Since Green bought it, he has considered the property his residence, and the "permanent home" to which he "would return after an absence." His intention has always been to move into the house after he finished the repairs. In 2012, when his mother died, Green moved her furniture into the property. *Green testimony; Birch argument.*
10. Green works part-time in Indiana and is a member of Indiana chapters of the American Legion, VFW, and the Fraternal Order of Eagles. All of Green's doctors are in Ohio and he voted in Ohio until 2018. Green held an Ohio driver's license until January 2018, but he argued that his failure to obtain an Indiana driver's license until 2018 is more a matter

for the Bureau of Motor Vehicles and should not preclude him from obtaining a homestead deduction. *Green testimony; Birch argument; Pet'r Ex. 5, 6, 7, 8.*

11. While Green does not have his mail delivered to the property, it is not because the property is not his residence. Rather, it is because he does not want to install a mail receptacle out by the road. Instead, he has much of his mail delivered to his girlfriend's house. And he also has some of his important bills and documents mailed to his son, Joel Green, who lives in Ohio and helps manage his affairs, particularly in the winter months while he is traveling. *Green testimony.*
12. Other people in the community who know Green provided affidavits stating that while he is away traveling for weeks at a time, he always returns to Ligonier as his place of residence, and that he has been renovating the property with the intent to live there. *Green testimony; Pet'r Ex. 1, 2, 3.*
13. In support for reinstating the homestead deduction, Green cited the Indiana Tax Court's holding in *Kellam v. Fountain Co. Ass'r*, and an Indiana Supreme Court holding affirming Evan Bayh's eligibility to run for Indiana Governor in 1988. Based on these cases, Green argued that a person does not have to live in a property, or even in Indiana, to claim Indiana residency and qualify for a homestead deduction. All that is required is an intent to return and a belief that the property is one's permanent residence. Green is entitled to a homestead deduction because the property is the only property he owns, he intends to make the property his home, and he has resided in Indiana since 2000. His homestead deduction should be reinstated not only for 2017, but also retroactively back to 2013. *Birch argument; Pet'r Ex. 4.*

SUMMARY OF RESPONDENT'S CASE

14. Green's application for a homestead deduction was originally approved in 2009 because it was assumed he would soon move into the property and obtain an Indiana driver's license. The process of removing homestead deductions generally began in 2011 when

the Auditor mailed “pink forms” to all “homesteaded properties” seeking information that was not included on the “old applications.” When Green returned his pink form in 2011, he still had an Ohio driver’s license. *Knafel testimony; Resp’t Exs. 5, 6.*

15. The Auditor had, at that time, hired a company called SRI, to investigate “homestead frauds.” The Auditor forwarded Green’s information to SRI because he was still using an Ohio driver’s license. SRI sent Green a letter informing him of the investigation in 2013. As a result of its investigation, SRI recommended that the homestead deduction be removed. Auditor Knafel did so on June 12, 2013. Green did not reapply for a homestead deduction until 2018. *Knafel testimony; Resp’t Ex. 5.*
16. The Assessor argued that Green failed to timely appeal the 2013 removal of his homestead deduction. According to Ind. Code § 6-1.1-15-1.1(b), Green needed to appeal that action within three years after the taxes affected by the removal were first due, which would have been May 2017. But Green did not file his appeal until October 17, 2017. And because Green did not reapply for a homestead deduction until 2018, he did not qualify for the deduction in 2013-2017. *Graft argument; Resp’t Brief at 4-5.*
17. If Green’s appeals are deemed timely, the Board should nevertheless find against him for 2013-2016 based on the provisions of Indiana Code § 6-1.1-15-1.1(c) and (d), which state:

(c) Except as provided in subsection (d), an appeal under this section applies only to the tax year corresponding to the tax statement or other notice of action.

(d) An appeal under this section applies to a prior tax year if a county official took action regarding a prior tax year, and such action is reflected for the first time in the tax statement. A taxpayer who has timely filed a written notice of appeal under this section may be required to file a petition for each tax year, and each petition filed later must be considered timely.

Ind. Code § 6-1.1-15-1.1(c), (d). The Assessor argued that Green failed to commence appeals for 2013-2016 by filing separate petitions for each year, and the Board's Notice of Hearing only indicated that 2017 was at issue. *Graft argument; Resp't Brief at 5.*

18. The Assessor also asserted that Green failed to prove the property was his principle place of residence. While the Assessor understands the legal standard set forth in the *Kellam* case, subjective intent to reside somewhere is not enough. There must be some corresponding objective factors to prove that intent. In the cases Green cited, Mr. Kellam and Evan Bayh both had Indiana driver's licenses, Indiana mailing addresses, and both voted in Indiana. The courts looked to that evidence as proof of their intent to reside in Indiana, but that type of evidence is absent in this case. Therefore, the Board should uphold the removal of Green's homestead deduction. *Graft argument; Resp't Brief at 6-8.*

ANALYSIS

19. Indiana Code § 6-1.1-12-37 provides a standard deduction from the assessed value for a homestead, which the statute defines as a dwelling that an individual owns and uses as his principle place of residence and up to one acre of surrounding land. Ind. Code § 6-1.1-12-37(a)-(c). At all times relevant to this appeal, a taxpayer had to apply for the homestead deduction in one of two ways. First, he could file a certified statement with the county auditor on forms prescribed by the DLGF. Ind. Code § 6-1.1-12-37(e). The DLGF prescribed the Claim for Homestead Property Tax Standard/Supplemental Deduction (Form HC10) for that purpose. 50 IAC 24-4-2. A taxpayer had to complete Form HC10 within the calendar year for which the deduction was sought and file that form on or before January 5 of the immediately succeeding year. *Id.*; Ind. Code § 6-1.1-12-37(e). Alternatively, a taxpayer could use a sales disclosure form to claim the deduction at the time of purchase. *See Id.*; Ind. Code § 6-1.1-12-44.
20. Here, there is no dispute that the Auditor removed Green's homestead deduction in 2013. Indiana Code § 6-1.1-15-1.1(a)(3) allows taxpayers to appeal "[t]he approval, denial, or

omission of a deduction, credit, exemption, abatement, or tax cap.” But such appeals must be made “not later than three (3) years after the taxes were first due.” Ind. Code § 6-1.1-15-1.1(b).

21. In Indiana, property taxes are due and payable in two (2) equal installments on May 10 and November 10 of the year following an assessment. Ind. Code § 6-1.1-22-9(a). Thus, the taxes based on the 2013 removal of the homestead deduction would have been first due on May 10, 2014. The deadline to appeal the Auditor’s action was therefore May 10, 2017. Because Green’s Form 133 petition was filed on or after September 28, 2017, it was untimely. Accordingly, Green is not entitled to have the homestead deduction reinstated for 2013 even if he was otherwise eligible for it.
22. Because Green did not receive the homestead deduction for 2013, he needed to file the certified statement required by Ind. Code § 6-1.1-12-37(e) to claim a homestead deduction for any of the subsequent years under appeal. But the first year for which Green reapplied for a homestead deduction following its removal in 2013 was 2018. Because Green did not file a certified statement claiming the homestead deduction for 2014-2017, he is not entitled to the deduction for any of those years.

SUMMARY OF FINAL DETERMINATION

23. In accordance with the above findings and conclusions, Green is not entitled to the homestead deduction for the 2013-2017 assessment years.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.